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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MDD - 203616

PRELIMINARY RECITALS

Pursuant to a petition filed on October 21, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services, Disability Determination Bureau ("the agency") regarding an application for Medical Assistance (MA)-Disability benefits, a hearing was held on December 15, 2021, by telephone.

The issue for determination is whether Petitioner meets the legal standard for disability required to establish Medicaid eligibility.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

By: Disability Determination Bureau File

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 56-year old resident of Portage County.

2. Petitioner received Social Security Disability Insurance benefits following spinal surgery from approximately July 2000 through approximately April 2017 at which time his disability was determined to have ended based on excess earnings.
3. On March 4, 2020, Petitioner filed an application for Medicaid-Disability, alleged a disability of “back /L-4 – L-5 fusion [with] steel rods / screws” and an onset date of April 2000.
4. Petitioner suffered a concussion from a work injury in April 2020 and he has since been diagnosed with mild traumatic brain injury and post-concussive syndrome. He has experienced impaired memory impairment, concentration difficulties, and significant headaches though those symptoms have been improving and are expected to continue to improve.
5. Following an October 26, 2020 evaluation by [REDACTED] MD at the Traumatic Brain Injury Clinic & Headache Clinic, Neuroscience Group, Petitioner was advised that he could return to full-time work but that he was restricted to medium duty; that he should not engage in frequent twisting, bending, or overhead work; and that he should refrain entirely from climbing on ladders and operating heavy machinery.
6. Petitioner is currently employed part-time through a Title V program. He works as a merchandiser 20 hour per week at [REDACTED] and earns \$7.25 per hour. His job duties include, taking sorted merchandise (e.g., clothes and knickknacks) from carts to the retail floor and putting that merchandise on shelves. He works five hours shifts, is allowed two 15-minute breaks, and stands for the remaining 4.5 hours though he is allowed to rest and sit down if he needs to do so.
7. In the past fifteen years, Petitioner has had the following paid employment: floral delivery driver in or about 2015; light industrial worker in late 2016 and early 2017 and again in 2020; and van driver in 2020. In his job as a delivery driver, his sole responsibility was driving locally. He had a helper who loaded and unloaded the truck. As a van driver, he drove and picked up people from job sites, kept the van clean, and put gas in the van, as needed. That employment ended in early 2020 as a result of the Covid-19 pandemic. He then returned to light industrial work where he sustained the concussion referenced in Finding of Fact No. 3.
8. Petitioner completed high school and some college.
9. On November 6, 2020, the agency sent notice to Petitioner informing him that he was found not to be disabled and that he was not eligible for Medicaid based on disability.
10. On December 8, 2020, Petitioner requested reconsideration of the agency’s denial.
11. On or prior to October 21, 2021, the agency denied Petitioner’s request for reconsideration and forwarded his file to the Division of Hearings and Appeals.
12. Petitioner is enrolled in Family Care, a Medicaid long term care waiver program and is thus currently eligible for Medicaid card services.

DISCUSSION

In order to be eligible for Medical Assistance (MA) as a disabled person, an applicant must meet the same test for disability as that used by the Social Security Administration to determine disability for Supplemental Security Income (Title XVI benefits). Wis. Stat. § 49.47(4)(a)4. To satisfy the legal standard for disability, an individual must, as a threshold matter, establish that s/he is unable to engage in any substantial gainful activity because of a medically determinable physical or mental condition which can be expected to result in death or which has lasted or can be expected to last for at least twelve months. See 20 C.F.R. § 416.905. In addition, an individual’s circumstances must be evaluated according to the following sequential five-part test:

1. An individual who is working and engaging in substantial gainful activity will not be found to be disabled regardless of medical findings. In 2022, the SGA earnings limit for disabled, non-blind individuals is \$1,350 per month.
2. An individual who does not have a "severe impairment" will not be found to be disabled.
3. If an individual is suffering from a severe impairment which meets the duration requirement and meets or equals a listed impairment in Appendix I, subpart P of part 404 of the federal regulations, a finding of disabled will be made without consideration of vocational factors (age, education, and work experience.)
4. If an individual is capable of performing work he or she has done in the past, a finding of not disabled must be made.
5. If an individual's impairment is so severe as to preclude the performance of past work, other factors, including age, education, past work experience and residual functional capacity must be considered to determine if the individual can adjust to types of work the individual has not performed in the past.

20 C.F.R. § 416.920.

When an individual has an impairment or combination of impairments resulting in *both* (1) physical limitations and (2) mental (emotional and psychological) limitations, both of those separate types of impairments must be evaluated. The relevant federal regulations provides the following relevant guidance:

When we assess your *physical* abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis . . . When we assess your *mental* abilities, we first assess the nature and extend of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis.

20 C.F.R. 416.945(b) and (c).

Here, the agency's case notes indicate that Petitioner was found to be not disabled because he retains the ability to perform light work with non-exertional limitations and capable of the basic mental demands of unskilled work. Petitioner did not present any additional medical documentation but did provide testimony regarding his past relevant work and his current employment as well as testimony regarding his current symptoms

An application of the five-step sequential disability evaluation process appears below.

Steps 1 and 2: It is undisputed that Petitioner is not engaged in substantial gainful activity and that his combination of impairments is severe.

Step 3: The DDB found that Petitioner's conditions do not meet or equal a listed impairment. At hearing, Petitioner offered no argument or persuasive evidence to dispute that finding. Je thus did not establish that

any of his conditions meet or equal criteria set forth in the listing of impairments. And, he is therefore not entitled to a finding of disability at this step.

Steps 4 and 5: The DDB determined that Petitioner remained able to perform light work, that he could follow 1-2 step directions, and that he thus has the mental capacity to perform unskilled work. I note that Petitioner's current employment at [REDACTED], as he described it a hearing, constitutes light work. Federal regulations defines light work as those jobs that require lifting no more than 20 pounds at a time with frequent lifting of up to ten pounds and a good deal of walking or standing and/or some pushing and pulling. See 20 C.F.R. §404.1567. Although Petitioner is not engaged in SGA, the work he is doing is unskilled and light work and Petitioner did not present sufficient evidence to demonstrate that his impairments restrict him from doing additional similar work. I therefore find that Petitioner is able to perform past relevant work despite his medically determinable impairments and the resulting limitations.

I note that Petitioner's job is a Title V job and it is possible that accommodations are being afforded to him that would not be afforded in other, typical work settings but Petitioner did not present evidence sufficient to establish that. I also note that Petitioner recently began receiving Medicaid benefits through a long-term care Medicaid program. He did not however present any evidence regarding the basis for that determination.

CONCLUSIONS OF LAW

The petitioner is not disabled for MA-Disability purposes.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 19th day of January, 2022

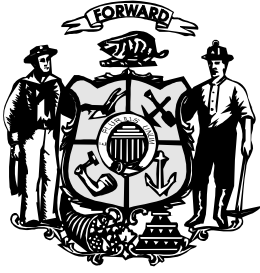


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Teresa A. Perez

Administrative Law Judge

Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 19, 2022.

Marathon County Department of Social Services
Disability Determination Bureau